

**Letter of Findings Number: 02-20130008**  
**Income Tax**  
**For Tax Years 2009 and 2010**

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**ISSUE**

**I. Adjusted Gross Income Tax—Apportionment: Sales Factor.**

**Authority:** IC § 6-3-2-2; IC § 6-8.1-5-1.

Taxpayer protests the imposition of income tax based on adjustments to its sales factor.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state corporation doing business in Indiana. Taxpayer is a distributor selling tangible personal property to retailers and a variety of commercial and industrial customers. The Indiana Department of Revenue ("Department") conducted an audit for 2009 and 2010 tax years. As the result of an audit, the Department determined that Taxpayer owed additional adjusted gross income tax and issued assessments for the 2009 and 2010 tax years. The Department determined that Taxpayer had not properly reported the receipts in its sales factor for the tax years in question. Taxpayer protested the assessments. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

**I. Adjusted Gross Income Tax—Apportionment: Sales Factor.**

**DISCUSSION**

The Department recalculated Taxpayer's Indiana sales factor and apportionment percentages which resulted in additional Indiana adjusted gross income tax assessments. Taxpayer protests the Department's recalculation of the sales factor in the apportionment formula for adjusted gross income tax. The Department determined that Taxpayer had reported a higher amount of sales to Indiana on its sales tax returns than the amount of sales it reported to Indiana on its adjusted gross income tax return. After determining that the two numbers did not match, the Department adjusted the sales factor numerator to the higher amount reported on the sales tax returns. Taxpayer maintains that the Department incorrectly added sales to the numerator and denominator of its Indiana sales factor formula.

The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

For the tax years in question, the sales factor is combined with the payroll factor and the property factor to arrive at an apportionment factor to determine the amount of a taxpayer's income which is subject to Indiana adjusted gross income tax, as established by IC § 6-3-2-2(b). The sales factor is explained by IC § 6-3-2-2(e), which states in relevant part:

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year.

. . . .

The Department is permitted to use the best information available to determine Taxpayer's total Indiana sales figures, as provided by IC § 6-8.1-5-1(b). If the Department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the Department. Id.

The Department determined that, based upon the best information that was available at the time of the audit, the numerator and denominator of the sales factor should be adjusted to reflect the higher of "gross sales" reported amount on its sales tax returns. This adjustment resulted in a larger sales factor percentage, which in turn resulted in a higher apportionment percentage. The higher apportionment percentage resulted in an assessment for additional adjusted gross income tax for the 2009 and 2010 tax years.

During the protest, Taxpayer presented additional documentation to reconcile the amount of sales tax gross receipts to the number of Indiana "retail sales" originally reported in its sales factor on the adjusted gross income tax returns. Based upon the documentation presented, it appears that the adjustments made to Taxpayer's sales factor might not accurately reflect Taxpayer's "retail sales" for its sales factor. Therefore, the audit division is requested to review the audit report, to review the accompanying documentation, and to make whatever adjustments it deems warranted.

Accordingly, Taxpayer's protest of the Department's adjustments to its sales factor is sustained subject to the findings of a supplemental audit.

**FINDING**

Taxpayer's protest is sustained subject to the results of a supplemental audit.

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